

§ 20-178.1. Payment and review of civil penalty imposed by Department of Public Safety.

(a) Procedure. – A person who is assessed a civil penalty under this Article by the Department of Public Safety must pay the penalty within 30 calendar days after the date the penalty was assessed or make a written request within this time limit to the Department for a Departmental review of the penalty. A person who does not submit a request for review within the required time waives the right to a review and hearing on the penalty.

(b) Department Review. – Any person who denies liability for a penalty imposed by the Department may request an informal review by the Secretary of the Department or the Secretary's designee. The request must be made in writing and must contain sufficient information for the Secretary, or the Secretary's designee, to determine the specific basis upon which liability is being challenged. Upon receiving a request for informal review, the Secretary, or the Secretary's designee, shall review the record and determine whether the penalty was assessed in error. If, after reviewing the record, the Secretary, or the Secretary's designee, determines that the assessment or a portion thereof was not issued in error, the penalty must be paid within 30 days of the notice of decision.

(c) Judicial Review. – Any person who is dissatisfied with the decision of the Secretary and who has paid the penalty in full within 30 days of the notice of decision, as required by subsection (b) of this section, may, within 60 days of the decision, bring an action for refund of the penalty against the Department in the Superior Court of Wake County or in the superior court of the county in which the civil penalty was assessed. The court shall review the Secretary's decision and shall make findings of fact and conclusions of law. The hearing shall be conducted by the court without a jury. In reviewing the case, the court shall not give deference to the prior decision of the Secretary. A superior court may award attorneys' fees to a prevailing plaintiff only upon a showing of bad faith on the part of the Department, and any order for attorneys' fees must be supported by findings of fact and conclusions of law.

(d) Interest. – Interest accrues on a penalty that is overdue. A penalty is overdue if it is not paid within the time required by this section. Interest is payable on a penalty assessed in error from the date the penalty was paid. The interest rate set in G.S. 105-241.21 applies to interest payable under this section.

(e) The clear proceeds of all civil penalties assessed by the Department pursuant to this Article, minus any fees paid as interest, filing fees, attorneys' fees, or other necessary costs of court associated with the defense of penalties imposed by the Department pursuant to this Article shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. (2009-376, s. 2(a); 2011-145, s. 19.1(g).)